Tai Choi Yu v The Government of Malaysia & Ors

HIGH COURT (MIRI) — CIVIL SUIT NO MR 2 OF 1992
RICHARD MALANJUM JC
12 APRIL 1993

Civil Procedure *— Summons-in-chambers — Application by defendants to strike out plaintiff's writ and statement of claim under O 12 r 7 of the Rules of the High Court 1980 — Whether defendant could make such an application when he had only entered conditional appearance — Rules of the High Court 1980 O 12 r 7*

Civil Procedure *— Jurisdiction — Income tax assessment — Whether matters relating to income tax assessment should be referred to special commissioner — Real Property Gains Tax Act 1976 — Income Tax Act 1967*

The plaintiff acquired a parcel of land but no notification was made to the Inland Revenue Department, Kuching ('the second defendant') of the acquisition as required under s 12(1)(a) of the Real Property Gains Tax Act 1976. A notice of assessment was issued to the plaintiff by the second defendant on 21 January 1989 and thereafter further communications took place between the plaintiff and the second defendant which was represented by the third defendant. The affair culminated in an action taken by the defendants against the plaintiff for the gains tax assessed on the transaction and a judgment was obtained against the plaintiff on 22 January 1992 pursuant to O 26A of the Subordinate Courts Rules 1980. The plaintiff has appealed against the judgment and it is pending for hearing. In the interim the plaintiff filed this action. There were two applications before the court. The defendants by way of an amended summons-in-chambers sought for an order that the plaintiff's writ and statement of claim be set aside. The grounds relied upon were that: the writ and the statement of claim disclosed no reasonable cause of action; it was frivolous and vexatious; it was an abuse of the process of the court; and there were irregularities in the service of the writ. There were further grounds in an affidavit filed therein: improper party; lack of jurisdiction; the statement of claim was res judicata; and that the statement be struck out. In a pre-emptive move the plaintiff applied by way of notice of motion for an order that the application of the defendants be struck out on the ground that the said application following entry of conditional appearance under O 12 r 7 of the Rules of the High Court 1980 only entitled the defendants to set aside the writ for irregularities in form or service or for want of jurisdiction of the court. It was agreed by the parties that the application of the plaintiff be heard first.

Held, dismissing the application of the plaintiff and ordering that part of the defendant's statement of claim be struck out:

(1) Under O 12 r 7 an applicant may apply for an order either to set aside the writ, the service of the writ or notice of the writ or to declare that the writ or notice has not been duly served on him. In

the present case upon amendments of the summons-in-chambers the defendants were not only going under O 12 r 7 but also under O 18 r 19 and O 92 r 4 of the Rules of the High Court 1980 which they were entitled to do and the defendants were entitled to take such a course of action even though they had only entered a conditional appearance. In the circumstances there was no merit in the application of the plaintiff praying that the application of the defendant be struck out.

(2) On the issue of irregularities in the service of the writ there was no merit in such a contention as the parties had agreed that the writ had been re-served on the defendants.

(3) As for the issue of improper party such an issue was not properly before the court. It is only the third defendant that was claiming to be improperly joined. If he felt strongly about it he should have proceeded by way of another application.

(4) Paragraphs 4–15.1 of the defendant's statement of claim regarding the assessment made and the dissatisfaction thereof should have been dealt with before the special commissioner as provided under the Real Property Gains Tax Act 1976 and the Income Tax Act 1967 and the court had no jurisdiction to deal with matters set out in those paragraphs. Further, the issue raised in those paragraphs was already a subject of a court judgment and pending appeal. Accordingly the court was of the view that the plea of res judicata should succeed. However, the matters set out in paras 15.2–21 involved the interpretation of statutory provisions, questions of law and plain claims for fraud and negligence and these issues were not directly, plainly and obviously connected to the question of being dissatisfied with the assessment of the gains tax. As such the court had jurisdiction to determine those issues as they were triable issues and not obviously unsustainable. A full hearing was therefore necessary before the court can determine on the scope of the statutory and constitutional provisions raised in the statement of claim.

[Bahasa Malaysia summary

Plaintif telah memperolehi sebidang tanah tanpa membuat pemberitahuan kepada Jabatan Hasil Dalam Negeri, Kuching ('defendan kedua') tentang perolehan itu seperti yang dikehendaki di bawah s 12(1)(a) Akta Cukai Keuntungan Harta Tanah 1976. Suatu notis taksiran telah dikeluarkan kepada plaintif oleh defendan kedua pada 21 Januari 1989 dan sesudah itu komunikasi selanjutnya diadakan di antara plaintif dan defendan kedua yang diwakili oleh defendan ketiga. Perkara itu berakhir dengan suatu tindakan yang diambil oleh defendan terhadap plaintif untuk cukai keuntungan yang ditaksir atas transaksi itu dan suatu penghakiman telah diperoleh terhadap plaintif pada 22 Januari 1992 mengikut A 26A Kaedah-Kaedah Mahkamah Rendah 1980. Plaintif telah merayu terhadap penghakiman itu dan ianya menunggu perbicaraan. Sementara itu plaintif memfailkan tindakan ini. Terdapat dua permohonan di hadapan mahkamah.

Defendan melalui suatu saman dalam kamar yang telah dipinda telah meminta suatu perintah bahawa writ dan pernyataan tuntutan plaintif diketepikan. Defendan bergantung kepada alasan-alasan berikut: bahawa writ dan pernyataan tuntutan itu tidak mendedahkan sebarang kausa tindakan yang munasabah; ianya remeh dan menyusahkan; ianya adalah suatu penyalahgunaan proses mahkamah; dan penyampaian writ itu dilakukan luar aturan. Terdapat alasan-alasan selanjutnya di dalam afidavit yang telah difailkan: pihak yang salah; kukurangan bidang kuasa; pernyataan tuntutan itu adalah res judicata; dan bahawa pernyataan tuntutan itu harus dibatalkan. Dalam suatu tindakan terlebih dahulu plaintif memohon melalui notis usul untuk suatu perintah bahawa permohonan defendan dibatalkan atas alasan bahawa permohonan tersebut selepas kemasukan kehadiran bersyarat di bawah A 12 k 7 Kaedah-Kaedah Mahkamah Tinggi 1980 hanya memberi defendan hak untuk mengetepikan writ kerana luar aturan dalam bentuk atau penyampaian atau kerana kekurangan bidang kuasa mahkamah. Telah dipersetujui oleh kesemua pihak bahawa permohonan plaintif didengar dahulu.

Diputuskan, menolak permohonan plaintif dan memerintahkan bahawa sebahagian daripada pernyataan tuntutan defendan dibatalkan:

(1) Di bawah A 12 k 7 seseorang pemohon boleh memohon suatu perintah sama ada untuk mengetepikan writ, penyampaian writ atau notis writ atau mengisytiharkan bahawa writ atau notis itu tidak disampaikan pada beliau seperti yang sepatutnya. Dalam kes ini atas pindaan saman dalam kamar defendan tidak hanya bertindak di bawah A 12 k 7 tetapi juga di bawah A 18 k 19 dan A 92 k 4 Kaedah-Kaedah Mahkamah Tinggi 1980 yang mereka berhak melakukan dan defendan berhak mengambil perjalanan tindakan seperti itu walaupun mereka hanya memasukkan suatu kehadiran bersyarat. Dalam keadaan begitu permohonan plaintif memohon bahawa permohonan defendan dibatalkan tiada merit.

(2) Atas isu luar aturan dalam penyampaian writ itu, penghujahan seperti itu tiada merit kerana kesemua pihak telah bersetuju bahawa writ itu telah disampaikan semula pada defendan.

(3) Mengenai isu pihak yang salah, isu itu tidak dengan betul berada di hadapan mahkamah. Hanya defendan ketiga yang mendakwa telah salah dimasukkan. Jika beliau rasa kuat tentangnya beliau harus bertindak melalui permohonan yang lain.

(4) Perenggan 4–15.1 dalam pernyataan tuntutan defendan mengenai taksiran yang telah dibuat dan perasaan tidak puas hati atasnya seharusnya dibicarakan di hadapan pesuruhjaya khas seperti yang diperuntukkan di bawah Akta Cukai Keuntungan Harta Tanah 1976 dan Akta Cukai Pendapatan 1967 dan mahkamah tiada bidang kuasa untuk membicarakan perkara yang dibentangkan dalam perenggan tersebut. Tambahan pula, isu yang ditimbulkan dalam perenggan tersebut sudah pun menjadi perkara penghakiman mahkamah dan rayuan yang belum selesai. Oleh kerana itu, mahkamah berpendapat bahawa pli res judicata juga

berjaya. Akan tetapi, perkara yang dibentangkan dalam perenggan 15.2–21 melibatkan tafsiran peruntukan statutori, soalan undang-undang dan tuntutan nyata kerana fraud dan kecuaian dan isu-isu tersebut tidak berhubung secara langsung dan nyata pada soalan mengalami perasaaan tidak puas hati dengan taksiran cukai keuntungan. Oleh itu mahkamah mempunyai bidang kuasa memutuskan isu-isu tersebut kerana mereka merupakan isu-isu yang boleh dibicarakan dan bukan secara nyata tidak boleh dipertahankan. Suatu perbicaraan penuh adalah perlu sebelum mahkamah boleh memutuskan skop peruntukan statutori dan perlembagaan yang ditimbulkan dalam pernyataan tuntutan itu.]

[*Editorial Note*: The plaintiff has appealed to the Supreme Court vide Civil Appeal No 01–17–93.]

Cases referred to

1 *The Ocean Jade* [1991] 2 MLJ 385 (refd)
2 *Tye Chwee Hoon v Cayman Commodities (M) Sdn Bhd & Anor* [1989] 2 MLJ 317 (refd)
3 *Tio Chee Hing & Ors v Government of Sabah* [1981] 1 MLJ 207 (refd)
4 *Arumugam Pillai v Government of Malaysia* [1980] 2 MLJ 283 (refd)
5 *Othman & Anor v Mek* [1971] 2 MLJ 214 (refd)
6 *Lian Ann Lorry Transport & Forwarding Sdn Bhd v Govindasamy* [1982] 2 MLJ 232 (folld)
7 *CC Ng & Brothers Sdn Bhd v Government of State of Pahang* [1985] 1 MLJ 347 (refd)
8 *Bank Bumiputra Malaysia Bhd v Majlis Amanah Ra'ayat* [1979] 1 MLJ 23 (refd)
9 *Lee Nyan Choi v Voon Noon* [1979] 2 MLJ 28 (refd)
10 *Drummond-Jackson v British Medical Association* [1970] 1 All ER 1094 (refd)

Legislation referred to

Rules of the High Court 1980 O 12 r 7

Tai Choi Yu (*Tai & Co*) for the plaintiff.

Bazain Idris (Senior Federal Counsel) and *Nik Suhaimi bin Nik Sulaiman* (Federal Counsel) for the defendants.

Cur Adv Vult

Richard Malanjum JC:

A The undisputed facts

The undisputed facts as gathered from the affidavits filed herein by the parties are as follows:

A The plaintiff acquired a parcel of land described as Miri Lease No 4445 on 9 November 1983 from the disposer Clement Tai Van Yu. There was no notification to the second defendant of the acquisition by the plaintiff as required under s 12(1)(a) of the Real Property Gains Tax Act 1976 (hereinafter called 'the 1976 Act'). On receipt of information pertaining to
B the transaction and the subsequent communications between the second defendant and the plaintiff a notice of assessment was issued to the plaintiff by the second defendant on 21 January 1989. Thereafter further communications took place between the plaintiff and the second defendant which was represented by the third defendant. The affair culminated in an
C action taken by the defendants against the plaintiff for the gains tax-assessed on the transaction and a judgment was obtained against the plaintiff on 22 January 1992 pursuant to O 26A of the Subordinate Courts Rules 1980. The plaintiff has appealed against the judgment and it is pending for hearing. In the interim the plaintiff filed this action.

D *B The applications*

There are two applications before me each by the defendants and the plaintiff respectively. The defendants' application is by way of an amended summons-in-chambers redated 14 August 1992 seeking for the following orders, namely:
E

(i) the writ dated 18 January 1992 and the statement of claim dated 16 January 1992 be set aside; and
(ii) costs of the application be given to the defendants.

The grounds of the application are given as follows:

F (1) the writ and the statement of claim disclosed no reasonable cause of action;
(2) it was frivolous and vexatious;
(3) it was an abuse of the process of the courts;
(4) and further grounds as contained in the affidavit filed herein marked 'SH' affirmed on 11 March 1992:

G *(a) improper party*
(b) no jurisdiction
(c) the statement of claim was res judicata
(d) to struck (sic) out the statement of claim; and

(5) irregularities in service of the writ.

H (The portions in italics are those incorporated upon amendment). The original summons-in-chambers of the defendants is dated 12 March 1992.

(i) The plaintiff's application

In a pre-emptive move the plaintiff filed by way of a notice of motion an
I application praying that the application of the defendants be struck out on the ground 'that the said application following entry of conditional appearance under O 12 r 7 of the Rules of the High Court 1980 only entitles the defendants to set aside the writ for irregularities in form or

service thereof or for want of jurisdiction of the court'. The defendants in fact entered a conditional appearance on 13 February 1991. A

At the commencement of the hearing the parties agreed to have the application of the plaintiff heard first and in chambers. I shall therefore deal with the plaintiff's application first.

In a nutshell, the plaintiff is in fact making a preliminary objection to the defendants' application on the basis that O 12 r 7 of the Rules of the High Court 1980 (hereinafter called 'the RHC 1980') has a limited capacity and does not include what the defendants are seeking for. B

Order 12 r 7 of the RHC 1980 reads:

(1) A defendant to an action may at any time before entering an appearance therein, or, *if he has entered a conditional appearance, within 14 days after entering the appearance*, apply to the Court for *an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him* or discharging any order giving leave to serve the notice on him out of the jurisdiction. C

(2) An application under this rule must be *made by summons*. (Emphasis added.) D

I note that the application of the defendants was made after the expiry of 14 days as required under O 12 r 7. But there was no objection coming from the plaintiff who appeared in person being an advocate of the High Court in Borneo. Perhaps it is due to the purported application by the defendants seeking for extension of 30 days to file their application when they first sought leave to file a conditional appearance. But on perusal of the ex parte application for leave to enter a conditional appearance dated 13 February 1992 I find no prayer for the extension of the period. It is only in para 5 of the supporting affidavit of Encik Nik Suhaimi bin Nik Sulaiman affirmed on 12 February 1992 that there is a reference for a request for an extension of the period. Yet in para 6 of the same affidavit only the prayer stated in the ex parte summons-in-chambers was prayed for and I find no order being extracted to indicate what was granted by the learned senior assistant registrar when he wrote 'OIT' on the summons itself. Anyway as there was a request made albeit in the supporting affidavit and it is not clear what the learned senior assistant registrar granted, I give the benefit of the doubt to the defendants that such an order was made. Moreover there was no objection from the plaintiff. Ordinarily in my view the orders in the RHC 1980 are meant to be observed strictly. (See: *The Ocean Jade.*[1]) Thus, litigants and their counsel should not adopt a lax attitude and invoke O 2 or O 3 of the RHC 1980 at their whims and fancies. Unless they come with reasonable explanations that those orders in my view should not be made available easily. E F G H

Coming back to O 12 r 7 it is obvious that the order that may be applied by an applicant under this provision is for an order either to set aside the writ, the service of the writ or notice of the writ or to declare that the writ or notice has not been duly served on him. The grounds for making such an application may vary from case to case. I

In the present case however, upon amendments of the summons-in-chambers the defendants are not only going under O 12 r 7 but also under O 18 r 19 and O 92 r 4 of the RHC 1980. In my view the defendants are

A entitled to take such a course of action even though they have only entered a conditional appearance. In the case of *Tye Chwee Hoon v Cayman Commodities (M) Sdn Bhd & Anor*[2] his Lordship Mohamed Dzaiddin J (as he then was) expressed a similar view at p 318C (right):

> B As for the second point of objection, there was no necessity to file the defence after filing a conditional appearance and when there is a pending action by the second defendant to strike out the plaintiff's writ and the statement of claim.

(See also: *Tio Chee Hing & Ors v Government of Sabah*[3] where the striking out of the writ of summons and the statement of claim was allowed by the High Court and affirmed by the then Federal Court even before the C defendant entered on appearance.)

Accordingly, I find no merit in the application of the plaintiff and I hereby dismiss it. I make no order as to costs as indeed it was filed before the application of the defendants was amended.

D (ii) The defendants' application

I now deal with the application of the defendants.

On the issue of irregularities in service of the writ of summons I do not think it has any more merit as the parties agreed that the writ has been re-served on the defendants. The learned senior federal counsel submitted that the defendants should be awarded costs as the reservice was the E consequence of their objections. To that submission I would only say that since there was nothing shown that the defendants were put to further costs or inconvenience by the reservice there is no basis to grant any costs to the defendants.

As for the issue on improper party I do not think such an issue is properly F before this court. It is only the third defendant that is claiming to have been improperly joined. If he feels strongly about it he should proceed by way of another application under a different provision of the RHC 1980.

C The contentions of the parties

G I shall now deal together the other grounds of the application of the defendants.

During the hearing I note that the emphasis of the learned senior federal counsel was on the issue of jurisdiction. He submitted that this court has no jurisdiction to entertain the action of the plaintiff as the proper forum for H such a grievance, being dissatisfied with the assessment made, should be the special commissioner.

Perhaps at this juncture it may be appropriate and for convenience that the relief sought are reproduced.

The relief sought are:

I 1 a declaration that the first defendant's claim for real property gains tax of RM9,900 against the plaintiff is ultra vires and null and void as being contrary to established principles of natural justice and fairness;

2 a declaration that the rejection of Clement Tai Van Yu's (disposer) application for exemption under s 8 of the Real Property Gains Tax Act 1976 was ultra

vires and null and void as being contrary to established principles of natural justice and fairness and in violation of Art 8 of the Malaysian Constitution;

3 a declaration that the rejection of the plaintiff's appeal to the special commissioners of income tax by the second and third defendants is ultra vires and null and void as being contrary to natural justice and fairness and also in excess of jurisdiction;

4 general and special damages for consequential loss or damage caused by the negligence and/or breach of statutory duties of and/or by the third defendant as servant and agent of the first and second defendants during and in the course of his employment;

5 general and exemplary damages for fraud and oppressive arbitrary and unconstitutional acts of the second and third defendants;

6 interest thereon at such rate and for such period as the court deems just;

7 such further and other relief as may be just; and

8 costs occasioned by and incidental hereto.

As for the contents of the statement of claim I have examined them and my observations are as follows:

(a) for paras 1–3 they are basically introductory and I find no dispute in them;

(b) for paras 4–12 they are very much of evidential value related to the issue of the assessment made and the dissatisfaction thereof as indicated in paras 13–15.1;

(c) paragraphs 15.2 and 15.3 deals with the discretionary powers of the defendants and Art 8 of the Federal Constitution, the existence of such discretionary powers and their limitations. There is a question of interpretation of statutory and constitutional provisions involved;

(d) paragraph 16 and the particulars thereof is on the question of excess of jurisdiction on the part of the defendants. This is also a question of statutory interpretation on to the limit of the powers of the second and third defendants;

(e) paragraphs 17.1 and 17.2 are over a breach of the rules of natural justice and fairness on the part of the defendants. This is a question of law;

(f) as for para 18 and the particulars thereof it deals with the averment of fraud and oppressive arbitrary and unconstitutional acts of the defendants. This is also a question of law and limit of powers of the defendants in relation to the relevant statutory provisions; and

(g) paragraphs 19–21 together with the particulars thereof deal with the alleged negligence and breach of statutory duties on the part of the third defendant. A question of law and interpretation of statutory provisions.

D The findings of the court

From the above observations on the statement of claim it is in my judgment plain and obvious that paras 4–15.1 should have been dealt with before the special commissioner as provided under the 1976 Act and the Income Tax Act 1967 (hereinafter called 'the 1967 Act'). I agree with the learned senior federal counsel that for those paragraphs this court has no jurisdiction to

A entertain them. His Lordship Chang Min Tat FJ in *Arumugam Pillai v Government of Malaysia*[4] at p 287H (left) said this:

> Just as their Lordships did, we must not allow our vision to be obscured by 'the cloud of words' and fail to see that the relief claimed in this action, more clearly than in the Indian action, is, in substance, for the modification, if not, the
B cancellation of the assessment made under the Ordinance and the Act.

Further, the issue raised in those paragraphs is already a subject of a court judgment and pending appeal. Accordingly I am of the view that the plea of res judicata also succeeds. (See: *Othman & Anor v Mek.*[5])

But for paras 15.2–21 it is my view that they involve interpretation of
C statutory provisions, questions of law and plain claims for fraud and negligence. I do not think these issues are directly, plainly and obviously connected to the question of being dissatisfied with the assessment of the gains tax. As such I think this court has jurisdiction to determine those issues. Guidance may be sought for the present case from the case of *Lian Ann Lorry Transport & Forwarding Sdn Bhd v Govindasamy*,[6] where the issue
D before the then Federal Court was on the interpretation of s 31 of the Employees' Social Security Act 1969. It was submitted by the learned counsel for the appellant in that case that the question as to whether the respondent was an employee within the meaning of the Act ought to be decided by the Social Security Appellate Board and not by a civil court. His
E Lordship Salleh Abas FJ (as he then was) at p 236F (right) to I (right) said this:

> The effect of the appellant's contention on the second ground of appeal, therefore, is that neither the learned trial judge nor we have the jurisdiction to determine in this appeal the question as to whether the respondent was an employee or not; and that only after the Board has so determined it would the learned trial judge
F and we either by way of a submission by the Board or by way of an appeal have the necessary jurisdiction to decide the question and that even here we are limited to decide only upon matters involving a substantial question of law. If this submission is right it means that the learned trial judge should not have decided the question as to whether or not the respondent was an employee at all. Yet the decision on this issue is crucial to the court's determination on the
G applicability or otherwise of s 31 of the Act which is part of the appellant's case. Does it mean that the court has also no jurisdiction to decide on the interpretation of this section? Or does it mean that the court, when confronted by the question during the course of determining the applicability or otherwise of s 31 of the Act, must adjourn the hearing and refer the question to the Board?

H His Lordship continued at p 237 B (right) to say this:

> Quite apart from this technical objection, counsel's submission is also untenable because the issue which the learned trial judge was called upon to decide is really on the interpretation of s 31 of the Act and not on the question of the respondent being an employee within the meaning of the Act, although such question is
I crucial to the main issue. Section 84 of the Act does not enact that the applicability or otherwise of s 31 lies with the Board. Indeed it will be unconstitutional as it is contrary to Art 121 of the Federal Constitution if the Act were to arrogate the interpretation of this section to the Board. The determination of a preliminary question as to whether or not the respondent was an employee is not only plainly

> a legal question but also an integral part of the interpretation of s 31 which is legally and constitutionally not within the competence of the Board to decide.

Similarly in the present case I find no provision in the 1976 Act or in the 1967 Act which deprives the civil court of jurisdiction when the question of statutory interpretation or plain question of law arises. Indeed s 102(9) of the 1967 Act provides 'appeal' to mean only an appeal against an assessment.

I am also fortified in my view by *Arumugam Pillai*'s case[4] where Chang Min Tat FJ at p 288 (left) said this:

> ... we therefore take the view that the cause of action is one seeking to have the particular statutory provision in the federal law relating to taxation determined by the court. Perhaps in such a circumstance, resort should have been had on O 25 r 2, Rules of the Supreme Court 1957, an objection taken on the pleadings and the point set down for argument.

It is a settled law that 'the inherent power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power. It should be exercised with the utmost caution': per Seah FJ at p 350I (left) in the case of *CC Ng & Brothers Sdn Bhd v Government of State of Pahang*.[7] It has also been held that 'it is no part of the court's function at this stage of the litigation to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial': per Raja Azlan Shah Ag CJ (Malaya) (as his Majesty then was) in *Bank Bumiputra Malaysia Bhd v Majlis Amanah Ra'ayat*[8] at p 23G (right). Again in the case of *Lee Nyan Choi v Voon Noon*,[9] his Lordship Lee Hun Hoe CJ (Borneo) said this at p 29 C (right):

> As there are triable issues the proper course would be for the issues to be tried in the usual manner in open court. The power to dismiss an action summarily without permitting a party to proceed to trial is a drastic power and should be exercised with utmost caution. The power of summary procedure should only be resorted to in plain and obvious cases.

Accordingly in the present case the issues raised in paras 15.2–21 of the statement of claim, in my view, are triable issues and not obviously unsustainable. A full hearing is therefore necessary before this court can determine on the scope of the statutory and constitutional provisions raised in the statement of claim. I am unable therefore to agree with the contention of the defendants that there is no reasonable cause of action disclosed, that the action is frivolous and vexatious and an abuse of the process of the court. In *Drummond-Jackson v British Medical Association*[10] Lord Pearson at p 1101 said this:

> A reasonable cause of action means a cause of action with some chance of success, when only the allegations in the pleading are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out.

I have examined the statement of claim in the present case and I have given my views as above.

Incidentally I note that the prayers of this action appear to me to be substantially within the ambit of paras 15.2–21 of the statement of claim.

E Conclusions

In view of my findings herein above I hereby order that only paras 4–15.1 of the statement of claim be struck out. I leave it to the plaintiff to apply for the necessary amendments to the remaining paragraphs of the statement of claim in view of my preceding order. Since the defendants are only partially successful I order that only one-half of the taxed costs be awarded to them in the exercise of my discretion.

Order accordingly.

Reported by S Radhakrishnan